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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/765,552	01/26/2004	Koji Suzuki	YKI-0059-C	1629
23413	7590	10/05/2004	EXAMINER	
CANTOR COLBURN, LLP 55 GRIFFIN ROAD SOUTH BLOOMFIELD, CT 06002			VU, JIMMY T	
			ART UNIT	PAPER NUMBER
			2821	

DATE MAILED: 10/05/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/765,552	Applicant(s) SUZUKI ET AL.	
	Examiner Jimmy T Vu	Art Unit 2821	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 26 January 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-18 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-18 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>01/26/04</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Information Disclosure Statement

The references listed on the information disclosure statement submitted on 01/26/2004 have been considered.

Double Patenting

1. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

2. Claims 1, 8-10, 12-15 and 17 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1 and 6-8 of U.S. Patent No. 6,727,871 B1. Although the conflicting claims are not identical, they are not patentably distinct from each other because '595 teaches all of the limitations of the ion source as claimed in claims 1, 8-10, 12-15 and 17 of the present invention.

This is a provisional obviousness-type double patenting rejection.

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3. A rejection based on double patenting of the "same invention" type finds its support in the language of 35 U.S.C. 101 which states that "whoever invents or discovers any new and useful process ... may obtain a patent therefor ..." (Emphasis added). Thus, the term "same invention," in this context, means an invention drawn to identical subject matter. See *Miller v. Eagle Mfg. Co.*, 151 U.S. 186 (1894); *In re Ockert*, 245 F.2d 467, 114 USPQ 330 (CCPA 1957); and *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970).

A statutory type (35 U.S.C. 101) double patenting rejection can be overcome by canceling or amending the conflicting claims so they are no longer coextensive in scope. The filing of a terminal disclaimer cannot overcome a double patenting rejection based upon 35 U.S.C. 101.

4. Claims 2-7, 11, 16 and 18 are rejected under 35 U.S.C. 101 as claiming the same invention as that of claims 2-5 and 9 of prior U.S. Patent No. 6,727,871 B1. This is a double patenting rejection.

Claim Rejections - 35 USC § 102

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. Claims 1, 4-10, 12-15, 17 and 18 are rejected under 35 U.S.C. 102(b) as being anticipated by Segawa (U.S. Patent number 6,492,778 B1).

Regarding claim 1, Segawa discloses an electroluminescence display (Figs. 1-5) apparatus comprising:

a first electrode (61) formed above a substrate (10) (Figs. 2A-2B and 5);

an emissive element layer (62) formed on said first electrode; and

a second electrode (63) formed on said emissive element layer (62);

side faces of said first electrode are inclined and become broader toward the substrate side (Figs. 2A-2B and 5; col. 1, lines 20-67; col. 2, lines 5-67; col. 5, lines 40-67).

Regarding claims 4 and 6, Segawa discloses the electroluminescence display apparatus wherein the thickness of said first electrode is less than $1/2$ the film thickness of said emissive element layer (Figs. 2A-2B and 5).

Regarding claims 5 and 7, Segawa discloses the electroluminescence display apparatus wherein the thickness of said first electrode is less than $1/3$ the film thickness of said emissive element layer (Figs. 2A-2B and 5).

Regarding claim 8, Segawa discloses the electroluminescence display apparatus wherein said first electrode is unique to a pixel, and the apparatus is an active-matrix type having a thin-film transistor for driving said emissive element (Figs. 2A-2B and 5).

Regarding claims 9 and 15, Segawa discloses the electroluminescence display apparatus further comprising a planarization insulating film (17) formed so as to cover said thin-film transistor, with said first electrode formed on said planarization insulating film (Figs. 2A-2B and 5).

Regarding claims 10, 14 and 17, Segawa discloses the electroluminescence display apparatus is a passive-matrix type wherein said first electrode extends in a first direction and said second electrode extends in a second direction so as to intersect said first electrode (Figs. 2A-2B and 5).

Regarding claim 12, Segawa discloses an electroluminescence display apparatus comprising:

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a first electrode (61) formed above a substrate;
a emissive element layer (62) formed on said first electrode; and
a second electrode (63) formed on said emissive element;
the thickness of said first electrode is less than $\frac{1}{2}$ the thickness of said emissive element layer (Figs. 2A-2B and 5; col. 1, lines 20-67; col. 2, lines 5-67; col. 5, lines 40-67).

Regarding claim 13, Segawa discloses an electroluminescence display apparatus comprising:

a first electrode (61) formed above a substrate;
a emissive element layer (62) formed on said first electrode; and
a second electrode (63) formed on said emissive element;
the thickness of said first electrode is less than $\frac{1}{3}$ the thickness of said emissive element layer (Figs. 2A-2B and 5; col. 1, lines 20-67; col. 2, lines 5-67; col. 5, lines 40-67).

Conclusion

7. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Komiya et al disclosed related art.

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jimmy T Vu whose telephone number is (571) 272-1832. The examiner can normally be reached on M - F: 9 - 6:00.

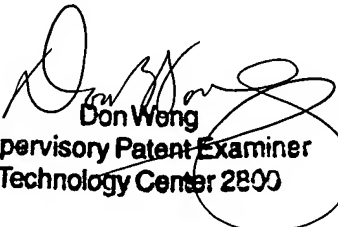
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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Don Wong can be reached on (571) 272-1834. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (571) 272-2800.

Jimmy Vu

September 29, 2004


Don Wong
Supervisory Patent Examiner
Technology Center 2800